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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,436	07/07/2003	Barend J. Van Den Heever	03-5784	5213
7590 03/08/2005				
William M. Hobby, III 157 E. New England Avenue, #375 Winter Park, FL 32789				
			EXAMINER AMERSON, LORI BAKER	
			ART UNIT 3764	PAPER NUMBER
DATE MAILED: 03/08/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/613,436

Applicant(s)

VAN DEN HEEVER, BAREND J.

Examiner

L. Amerson

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-13 and 155 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Arguments***

1. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

- a. Claims 1 is rejected under 35 U.S.C. 102(a) as being anticipated by Myers. Myers discloses an exercise apparatus having a folding A-frame (fig. 10) formed from two generally U-shaped frame sections (112, 114, 116, 118, 120) hinged together (fig. 1); a u-shaped swing portion (144) movably attached (fig. 14) to one frame section having a seat (111); and a pair of arms (138) with handle (162) portions. Regarding the language “said hinged folding frame sections being foldable on said hinge from a folded storage position to an open operative position”, “whereby a person sitting in said generally u-shaped swing portion seat and gripping and moving said handles can move said generally u-shaped swing portion and person sitting therein relative to said A-frame to thereby exercise the person’s arms and upper body” has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

b. Claims 2-3, 7-8 and 10-13, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers as applied to claim 1 above and further in view of Murray. As to claim 2, the device of Murray includes a leg exerciser (fig. 3) attached to the frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Myers in view of the teaching of Murray such that a leg exerciser is capable of being included on exercises for the purpose of providing additional exercising variety to a user. As to claim 3, the hinged sections of Myers have a lock (220). As to claim 7, the leg exerciser of Murray is an adjustable (175) bar (140) attached to the frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Myers et al in view of the teaching of Murray such that a member is capable of being adjusted. Regarding the language "allowing said feet to be placed thereon while a person is seated in said seat and to push said u-shaped member, seat and person to exercise said legs" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 8, Myers teaches adjustable arms (col. 6, lines 34-61). As to claim 10, see the paragraph above for claims 1 and 2. As

to claim 11, the seat of Myers has a back supporting member (111). As to claim 12, see the paragraph for claim 6. As to claims 13, see the paragraph for claim 7. As to claim 15, see the paragraph for claim 9.

c. Claim 4, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers et al as applied to claims 1 above, and further in view of Bodily et al. Myers discloses all of the limitations of the claimed invention except for an adjustable back and a removable foot member on the swing. As to claim 4, Bodily teaches and adjustable back (figs. 2a-2b). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Myers et al in view of the teaching of Murray such that a back support is capable of being adjusted. As to claims 6 and 9, Murray teaches a foot-supporting member mounted on the swing portion (fig. 1) that is capable of being removed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to in view of Miller such that a foot support is capable of being mounted on a detachably mounted on a swing portion.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the device of Lee. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "L. Amerson", with a stylized, cursive script.

L. Amerson